

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 91-10

August 20, 1991

TO: All Regional Directors, Officers-in-Charge  
and Resident Officers

FROM: Jerry M. Hunter, General Counsel

SUBJECT: Submission of Advice Cases

Pursuant to Manual Section 11751.1, I have conducted a review of the requirements for submission of cases to the Division of Advice and I have set forth below all of such requirements. 1/

MANDATORY SUBMISSIONS (MS)

TYPE OF CASE

INSTRUCTIONS

1. Section 10(j) Case, excluding those where RD finds no merit to charge.
2. 48-hour rule, i.e. after Board authorizes 10(j), Region wishes to delay filing of petition for 48 hours or more.

MS, with proviso that clear "no 10(j)" cases can be submitted to the AGC by phone.

MS to AGC.

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1/ This memorandum sets forth all current requirements, and thus it is not necessary to refer back to prior GC memoranda on this subject.

As explained more fully in Manual Section 1175.1, the designation "MS" means "mandatory submission." The designation "DS" means "discretionary submission." It refers to cases which often pose exceptionally difficult issues of law or policy. Accordingly, submission to Advice may very well be warranted, but such submission is discretionary rather than mandatory. Finally, the fact that a given subject matter is not listed means only that cases in that area do not ordinarily pose difficult issues of law or policy. However, individual cases in that area may do so. Accordingly, this memorandum is not intended to preclude a Regional Director from submitting a case in an area not listed herein.

3. Contempt of 10(j) or 10(1) court order. MS
4. Cases involving novel remedies. MS
5. Cases where Region wishes to overturn precedent. MS
6. Cases that are the subject of national attention. MS
7. Cases where charges presenting the same issues are filed in different Regions. MS
8. Cases involving antidual shop clauses ("Double-breasting" situations). MS
9. Novel issues involving impact of bankruptcy on our cases. MS to Special Litigation.
10. Unresolved issues where the filing of a grievance or lawsuit is alleged to be unlawful and Region wishes to issue complaint. MS
11. EAJA cases. MS if Region wishes to pay a claim. Otherwise, DS
12. Cases involving whether company owned by employees, in whole or in part (ESOP), has a bargaining obligation. MS
13. Cases involving whether employee activities to form an ESOP are protected. MS
14. Unresolved issues involving use of union-security moneys for "non-representative" purposes. MS
15. Cases where employer and Section 9 representative enter into an agreement to apply at new facility, e.g., Saturn Corp. MS

16. Cases-involving interpretation of other statutes, e.g., LMRDA, ERISA. MS
17. Cases presenting issues involving undocumented aliens. MS, unless resolved by GC Memorandum 88-9.
18. Cases involving bargaining to impasse for unilateral control over terms of employment in excess of that allowed by case law, e.g., Colorado Ute, 295 NLRB No. 57 (1989), Toledo Blade, 295 NLRB No. 68 (1989) American National Insurance, 343 U.S. 395 (1952). MS
19. Cases involving unilateral implementation after impasse, of employment terms constituting a statutory waiver. See Colorado-Ute, 295 NLRB No. 67. MS
20. Cases involving scope of Section 8(d) bargaining obligation under Dubuque Packing Company, 303 NLRB No. 66. MS, unless resolved by GC Memorandum 91-9.
21. Cases involving the effect of zipper clauses. See GTE Automatic Electric, Inc., 261 NLRB 1491 (1982). MS
22. Cases involving the effect of resignation upon dues checkoff authorization where a union-security clause is in effect. See IBEW Local 2008 (Lockheed), 302 NLRB 49 (1991) where this issue is left open. MS

DISCRETIONARY SUBMISSIONS (DS)

TYPE OF CASE

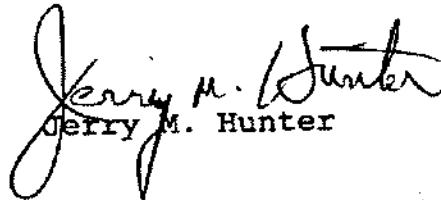
1. Cases of potential or actual overlapping jurisdiction with other Federal agencies.

INSTRUCTIONS

DS as to certain agencies; GC Memos 79-4 (OSHA); 80-10 (MSHA); 80-31 (EEOC) and 78-69 (Labor; Wage Hour). MS as to all other agencies.

2. Cases involving deferral to arbitration-Collver and Speilberg doctrines (See United Technologies, 268 NLRB 557 (1984) and Olin Corporation, 268 NLRB 573 (1984)).  
DS, except submit issues noted in GC Memos 84-5 and 84-10.
3. Cases involving concerted activity issues (See Meyers Industries, 281 NLRB No. 118 (1986)).  
DS, except submit issues noted in GC Memo 84-3.
4. Cases involving strike misconduct reinstatement issues (See Clear Pine Mouldings, 268 NLRB 1044 (1984)).  
DS
5. Cases involving validity of union mergers affiliations, disaffiliations.  
DS, except submit issues noted, in GC Memo 86-8.
6. Cases involving burden of proof issues in "mixed motive" cases (See Wright-Line, 251 NLRB 1083 (1980)).  
DS, except submit issues noted in GC Memo 80-58.
7. Cases involving a duty to supply assertedly confidential information (See Detroit Edison, 440 U.S. 301 (1979)).  
DS, except submit issues noted in GC Memo 79-22.
8. Cases involving shipping rules with respect to the use of containers.  
DS
9. Cases involving construction industry pre-hire agreements under Section 8(f).  
DS
10. Health Care Institution cases involving no-solicitation and no-distribution rules (See Beth Israel, 437 U.S. 483 (1978)).  
DS, except submit issues noted in GC Memo 79-76.
11. Cases involving arbitration issues after contract expiration (See Litton Financial Printing v. NLRB, 137 LRRM 2441 (1991)).  
DS, except submit issues noted in GC Memo 87-3.

12. Cases involving Jefferson, Chemical, 200 NLRB 992; Purolater Products, 289 NLRB 984 (1988). DS
13. Cases involving waiver and deferral issues concerning a drug testing program. DS, except submit issues noted in GC Memo 87-5.
14. Cases involving reinstatement of charges filed outside the Section 10(b) period (See Ducane Heating, 273 NLRB 1389 (1985), and Winer Motors, 265 NLRB 1457 (1982)). DS
15. Cases involving union access to private property (See Scott Hudgens, 424 U.S. 507 (1976), and Jean Country, 291 NLRB No. 4 (1985)). DS
16. Cases involving the issue of when a decision becomes final, so as to trigger the 10(b) period. See Postal Service Marina Center, 271 NLRB 397 (1984) and Sheet Metal Workers (Owl Constructors), 290 NLRB No. 49 (1988), n. 5. DS
17. Cases involving an employer's unilateral establishment and subsequent dealing with employee committees concerning terms and conditions of employment. DS

  
Jerry M. Hunter

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